

House of Assembly—No 78

As laid on the table and read a first time, 22 July 2020

South Australia

**Statutes Amendment (Attorney-General's
Portfolio) Bill 2020**

A BILL FOR

An Act to amend various Acts within the portfolio of the Attorney-General.

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Statutes Amendment (Attorney-General's Portfolio) Act 2020*.

2—Commencement

- (1) Subject to this section, this Act comes into operation on the day on which it is assented to by the Governor.
- (2) The following provisions come into operation on a day to be fixed by proclamation:
 - (a) sections 8 and 9;
 - (b) Part 6.
- (3) The following Parts come into operation immediately after section 4 of the *Statutes Amendment (Bail Authorities) Act 2020* comes into operation:
 - (a) Part 2;
 - (b) Part 9.
- (4) Part 7 comes into operation—
 - (a) immediately after section 4 of the *Summary Offences (Liquor Offences) Amendment Act 2018* comes into operation insofar as it inserts section 21OC; or
 - (b) on the day on which this Act is assented to by the Governor,whichever is the later.
- (5) Part 8 comes into operation on the day on which section 7 of the *Controlled Substances (Youth Treatment Orders) Amendment Act 2019* comes into operation.

3—Amendment provisions

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Bail Act 1985*

4—Amendment of section 5—Bail authorities

Section 5(1)—after paragraph (c) insert:

- (d) the Youth Court;

Part 3—Amendment of *Criminal Law Consolidation Act 1935*

5—Amendment of section 20AA—Causing harm to, or assaulting, certain emergency workers etc

(1) Section 20AA(6)—after "caused" insert:

(but will not be taken to be caused)

(2) Section 20AA(9)—after the definition of *prescribed emergency worker* insert:

recklessly—a person is reckless in causing harm to another if the person—

- (a) is aware of a substantial risk that his or her conduct could result in harm or serious harm (as the case requires); and
- (b) engages in the conduct despite the risk and without adequate justification;

6—Amendment of section 20AB—Further offence involving use of human biological material

Section 20AB(4)—delete the definition of *harm* and substitute:

harm has the same meaning as in Division 7A;

7—Amendment of section 86A—Using motor vehicle without consent

(1) Section 86A(3)—delete "*Children's Protection and Young Offenders Act 1979*" and substitute:

Young Offenders Act 1993

(2) Section 86A(3)—delete "Children's Court" and substitute:

Youth Court

8—Amendment of section 269X—Power of court to deal with defendant before proceedings completed

(1) Section 269X(1)(b)—delete paragraph (b) and substitute:

(b) commit the defendant to custody (in which case the defendant will, subject to subsections (4) and (5), be detained as if the defendant had been remanded in custody awaiting trial or sentence) until the conclusion of the investigation.

(2) Section 269X(2)(b)—delete paragraph (b) and substitute:

(b) commit the defendant to custody (being an appropriate form of custody determined, from time to time, by the Minister) until some subsequent date when the defendant is to be brought again before the court.

(3) Section 269X—after subsection (2) insert:

5 (3) A defendant committed to custody under subsection (1)(b) is in the custody of the CE (regardless of where the defendant is detained or the form of custody in which the defendant is detained) and, subject to subsections (4) and (5), the CE may give such directions as to the custody, supervision and care of the defendant as the CE considers appropriate.

10 (4) If, at the time at which a defendant is committed to custody under subsection (1)(b), the defendant is an involuntary inpatient at a treatment centre in accordance with the *Mental Health Act 2009* (because the defendant is subject to an inpatient treatment order under that Act)—

15 (a) the defendant must continue to be confined at the treatment centre for the duration of the inpatient treatment order and each subsequent inpatient treatment order that follows on from that order (if any); and

20 (b) at the conclusion of the confinement referred to in paragraph (a), the defendant will (subject to subsection (5)) be detained as if the defendant had been remanded in custody awaiting trial or sentence.

25 (5) If, at any time during the detention of a defendant under subsection (1)(b), the designated officer is satisfied that the defendant is not being detained in an appropriate form of custody, the designated officer may determine an appropriate form of custody and that determination is sufficient authorisation for the detention of the defendant in that alternative form of custody.

(6) The regulations may make provision in relation to the manner in which the designated officer is to determine an appropriate form of custody for the purposes of subsection (5).

30 (7) In this section—

CE has the same meaning as in the *Correctional Services Act 1982*;

designated officer means the person, or holder of the office, prescribed by the regulations for the purposes of this section.

9—Transitional provision

35 (1) If, immediately before the relevant day, a defendant is in any form of custody pursuant to an order of a court under section 269X(1)(b) or (2)(b) of the *Criminal Law Consolidation Act 1935*, the custody of the defendant may, after the relevant day, be determined as if the defendant had been committed to custody in accordance with section 269X(1)(b) or (2)(b) (as the case may be) of the *Criminal Law Consolidation Act 1935* as in force after the relevant day.

40 (2) In this section—

relevant day means the day on which section 8 of this Part comes into operation.

Part 4—Amendment of *Oaths Act 1936*

10—Amendment of section 28—Commissioners for taking affidavits

Section 28(1)(e)—delete "Governor" and substitute:

Attorney-General, by notice published in the Gazette,

Part 5—Amendment of *Professional Standards Act 2004*

11—Amendment of section 4—Interpretation

Section 4(1), definition of *occupational liability*—delete "under statute" and substitute:

otherwise

12—Amendment of section 5—Application of Act

(1) Section 5(1)—delete subsection (1)

(2) Section 5(2)—delete "However, this Act does not apply to" and insert:

This Act applies to civil liability in damages (in tort, contract or otherwise),
except for civil

Part 6—Amendment of *South Australian Civil and Administrative Tribunal Act 2013*

13—Amendment of section 10—Appointment of President

(1) Section 10(1)—after "Supreme Court" insert:

or the District Court

(2) Section 10—after subsection (1) insert:

(1a) If the person appointed to be President of the Tribunal was,
immediately before their appointment as President, a judge of the
District Court, the judge will, by virtue of holding the office of
President, have the same rank, title, status and precedence as a judge
of the Supreme Court.

(3) Section 10(2)—delete "of the Supreme Court"

(4) Section 10(2)(c)—after "Supreme Court" insert:

or the District Court, as the case may be

(5) Section 10(3)—delete subsection (3) and substitute:

(3) Service in the office of President of the Tribunal is taken, for all
purposes, to constitute service as—

(a) in the case of a judge who was, immediately before
appointment as President, a Supreme Court judge—a judge
of the Supreme Court; or

- (b) in the case of a judge who was, immediately before appointment as President, a District Court judge—a judge of the District Court.

(6) Section 10(8)(a)—after "Supreme Court" insert:

5 or the District Court (as the case may be)

Part 7—Amendment of *Summary Offences Act 1953*

14—Amendment of section 210C—Supply etc of liquor in certain areas

Section 210C—after subsection (1) insert:

10 (1a) However, a person will not be guilty of an offence against subsection (1) if 1 or more of the following circumstances apply:

- (a) the consumption or possession (or both) of liquor by the third person in the prescribed area is not prohibited under another Act or law;

- (b) the consumption or possession (or both) of liquor by the third person is not prohibited under another Act or law—

- (i) in the case of an offence against subsection (1)(a)(i)—in the part of the prescribed area in which the supply of liquor takes place; or

- (ii) in the case of an offence against subsection (1)(a)(ii) or (1)(a)(iii)—in the part of the prescribed area in which the supply of liquor is intended to take place;

- (c) under another Act or law, the third person is a person, or belongs to a class of persons, who, in the circumstances, is exempt from a prohibition on the consumption or possession (or both) of liquor that would otherwise apply to the person in the prescribed area.

Part 8—Amendment of *Young Offenders Act 1993*

15—Amendment of section 48—Escape from custody

30 Section 48—delete subsection (6) and substitute:

(6) This section does not apply to—

- (a) a youth serving a sentence of home detention; or

- (b) a youth who has been released on home detention by the Training Centre Review Board in accordance with section 41; or

- (c) a youth subject to a detention order under Part 7A of the *Controlled Substances Act 1984*.

Part 9—Amendment of *Youth Court Act 1993*

16—Amendment of section 32—Rules of Court

Section 32(1)—after paragraph (b) insert:

- (ba) regulating the making of bail applications, including limiting the making of bail applications to the Court in circumstances where the application may be made to another court; and

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